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No. _____

(CAPITAL CASE)

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD P. ROPER,
Superintendent, Potosi Correctional Center,
Petitioner,

v.

LEAMON WHITE,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

JEREMIAH W. ("JAY") NIXON
Attorney General of Missouri
STEPHEN D. HAWKE
Assistant Attorney General,
Counsel of Record
RONALD S. RIBAUDO,
Assistant Attorney General,
Of Counsel.
P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-8432
Attorneys for Petitioner

QUESTIONS PRESENTED
(Capital Case)

1. Is a defense counsel's decision not to interview or call two witnesses to testify ineffective assistance under the Sixth and Fourteenth Amendments even though (1) the first witness's testimony would be inadmissible under a state rule of evidence (identical to a South Carolina rule whose constitutionality is before this Court in *Holmes v. South Carolina*, 126 S.Ct. 34 (2005)), and (2) interviewing the second witness would not have yielded new information?

2. Is a state procedural rule an inadequate bar to federal habeas review solely because the remedy provided by a retroactive application of a judge-created exception to the procedural rule is deemed inadequate, even though the exception did not exist at the time of the initial application of the procedural rule, state precedent prohibited a broader remedy, and the adequacy of the procedural rule itself is not in dispute?

PARTIES TO THE PROCEEDING

Petitioner, Donald P. Roper, is the Superintendent of the Potosi Correctional Center, Missouri, where Respondent Leamon White is confined.

Respondent White is a prisoner in state custody pursuant to his conviction for first degree murder for which the jury sentenced him to death. He was the petitioner in a federal habeas corpus proceeding brought in the United States District Court for the Western District of Missouri.

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On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

Petitioner, by and through the Attorney General of Missouri, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinions of the U.S. Court of Appeals for the Eighth Circuit are reported at 206 F.3d 776, 307 F.3d 722, and 416 F.3d 728. App. 1, 63, 109. The June 14, 2004, order of the U.S. District Court for the Western District of Missouri is unreported. App. 8.

JURISDICTION

The Court of Appeals entered its judgment on August 2, 2005. App.1. The Court of Appeals denied the petition for rehearing and rehearing en banc on September 9, 2005. App. 1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. Petitioner previously sought certiorari review of the Court of Appeals' opinion of March 14, 2000. See *Luebbers v. White*, 531 U.S. 917 (mem. Oct. 2, 2000). Because that judgment was not final, this Court has jurisdiction to grant certiorari on the second question presented here, which is similar to the question presented in the previous certiorari petition. "Supreme Court review of a final judgment opens up the entire case, including all relevant interlocutory orders that may have been entered by the court of appeals or district court. The Court can reach back and correct errors in the interlocutory proceedings below, even though no attempt was made at the time to secure review of the interlocutory decree or even though such an attempt was made without success." Robert L. Stern, et al., SUPREME COURT PRACTICE §2.2 (8th ed. 2002) (collecting cases).

CONSTITUTIONAL & STATUTORY PROVISIONS

The Sixth Amendment to the Constitution of the United States provides: "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense."

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides: "No State shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law[.]"

Subsection (a) of 28 U.S.C. § 2254 provides: "The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."